

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5624**

Open Session

The Appeals Board convened at 1:00 p.m., November 15, 2017, in Sacramento with Chair Marty Block presiding.

1. Roll Call: <u>Members</u>	<u>Present</u>	<u>Absent</u>
Marty Block, Chair	x	
Michael Allen, Vice Chair	x	
Ellen Corbett	x	
Robert Dresser	x	

2. Approval of the Minutes:

The October 18, 2017 Meeting Minutes were approved unanimously.

3. Chair's Report:

Chair Block wished all staff a Happy Thanksgiving. He commented that it will be a little challenging around here because people take vacations this time of year and we have to cover for one another, but that's part of the job. We just keep trudging forward to make sure we meet our goals for March and anything the Board can do to support that please let them know.

4. Board Member Reports:

Vice Chair Allen expressed his gratitude towards all for the kindness shown to him by staff and fellow Board Members regarding the recent emergency they had up North. He commented that he is paying it forward with working with the community on recovery efforts which will keep them busy for quite a while.

Member Corbett also wished everyone a Happy Thanksgiving.

Member Dresser thanked IT staffer, Aaron Gravvat, for helping him out on his laptop beyond the call of duty.

5. Public Comment:

No public comment.

6. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Gonzales reported the Field Offices for the ninth straight month met its timeliness measures. There was a little concern last month because of the tax push but FO did manage to make all of the numbers for this month as well. So, moving into the holiday season when people take vacations the field is pretty well situated. FO has performed a number of mass calendars to schedule the older cases and make sure that they get heard. They are at a good phase right now moving into the end of the reporting period for the Department of Labor.

Chief ALJ/Executive Director Gonzales announced that ALJ Stephen Angelides was the successful applicant for the Presiding Judge of the Oakland Office of Appeals. He has experience in almost every area including Appellate Operations, as a Presiding Judge in the Field, and has been loaned out to other organizations to assist with some of their programs. She is hopeful that the situation in Oakland will be improved by having a permanent Presiding Judge in place.

Chief ALJ/Executive Director Gonzales reported that a number of staff, Lori Kurosaka, Janet Maglinte, Hugh Harrison, Brian Falkner, Rob Silva, attended a presentation on what is now called SLAA, the State Leadership Accountability Act, previously called FISMA. It is a program where each department has to prepare a report that assesses the risks of the organization and how it intends to control those risks. This is the first year that CUIAB is doing it on its own, with EDD having done it previously. Department of Finance's presentation yesterday explained how their portal works and the information CUIAB is to provide in the report. They provided a sample from last year and summarized the kinds of issues that came up as risks, some of which were: succession planning, one of the highest risks items identified, data security issues, and funding source issues. One of the things that they brought up was the funding in a situation where if there is a downturn and how we would fund up more quickly given the unfortunate situation that funding comes later. The report needs to be submitted no later than December 31, 2017, and we have already started to work on it.

Member Dresser asked if there was anything new in terms of the funding from Department of Labor, anything new with the new administration. Chief ALJ/Executive Director Gonzales responded they have not heard anything new. She commented that CUIAB has had that issue before, which is whether funding would be stalled, but right now attention is being put elsewhere.

Member Dresser asked if there was anything new with the Chief Counsel position, to which Chief ALJ/Executive Director Gonzales responded that the process is ongoing, with nothing new to report at this time.

Vice Chair Allen thanked Chief ALJ/Executive Director Gonzales for her quick response to questions from the local bar association trying to help employers because they have so many displaced workers, commenting that she was very prompt to get him the needed information. He passed the information on to the local bar because they were doing a symposium to help employers with displaced workers.

7. Chief ALJ of Appellate Operations Report:

Acting Presiding Judge Rebecca Bach reported that in October AO closed 72.1% of the cases within 45 days, meeting the 50% guideline and 98.4% of the cases within 75 days, exceeding the 80% guideline. AO opened 900 cases and closed 973 cases leaving a balance of 977 cases of which 820 are unemployment cases. AO's case aging average for October was 36.8, well within the standard of 40. The case aging did go up from September when it was 32.8, so they are keeping a close eye on case aging.

Acting PALJ Bach reported on the Precedent Decision Committee, stating that the committee has scheduled its first meeting in the first week of December. She will continue to keep the Board posted.

Chair Block asked what contributed to the case aging increasing since September and how it is being addressed. Acting PALJ commented that there are a lot of different factors but AO has been focusing its attention on tax cases, which takes time away from the UI cases, and case aging is based on the UI cases. Also, there have been a lot of people out for various reasons, so that affects all of the numbers. They have been addressing that by bringing in two retired annuitants to help the work flow and specifically today they have been taking a good look at some of the older cases, because they have quite a negative impact.

Chair Block reported that at the Labor Agency senior staff meeting today he addressed the progress CUIAB has been making on the tax cases. They are very happy about that, particularly EDD, but if CUIAB does have some trouble meeting goals for Department of Labor we would put emphasizes on the unemployment cases. There was agreement that that was the right priority. He remarked that we want to do as well as we can on the tax cases reducing the backlog but UI is still our primary concern.

8. Chief Information Officer, Nick Dressler Report:

CIO Dressler reported that IT continues to make progress on the Winscribe project. They have trained the IT Help Desk and the statewide trainers so when they are ready to roll out to the field offices everyone is trained, and if there are any issues the Help Desk is trained to handle support calls on that.

CIO Dressler reported that this weekend there will be an eCATS upgrade, so the system will not be available for the weekend. That is just the normal quarterly upgrade.

Chair Block questioned whether Winscribe was rolled out. CIO Dressler responded that it has been rolled out to the Chief's Office but not statewide yet. They are in the process of training the Chief's Office trainers. The statewide trainers got trained and are now putting together their materials for training and presentations to take out to the field offices to include handouts for the judges.

Chair Block commented he understood it would be rolled out by now. CIO Dressler stated they thought they would have it rolled out by now but they have had a few hiccups. Chair Block asked what the hiccups were and do they have an absolute drop dead time to get it done. CIO Dressler explained that he met with Executive Director Gonzales today and they are working on a schedule but there are some unanswered questions by the vendor as far as some issues that have arisen as well. The vendors anticipate to have the fix fairly soon but in the mean time they are not losing any progress because the trainers are modifying their documents and getting ready for when they do rollout. They are hoping to do rollout in December so instead of being completed by the end of December as they anticipated it might be complete by mid-January.

Chair Block specifically asked if they would be done with this rollout by mid-January. CIO Dressler stated that they hope to have it done by mid-January. He

clarified that they had hoped to have it done by the end of December but because of some issues that were unforeseen, not on IT side but on the vendor side; they have had to delay the start of the rollout.

Chair Block asked if they were having second thoughts about the vendor. CIO Dressler replied that it is a very good product but basically the vendor made an enhancement on the latest version and there are some issues where it is actually locking up the program. We wanted to adopt the latest version, but it is not the time to do that. If we go back to the older version the vendor has to do some customization to fit CUIAB's needs. They think they have a solution where they are going to combine old and new to get what CUIAB needs and have a stable environment. They are still testing to make sure they have a stable environment before it is rolled out. CIO Dressler stated he does not want to roll anything out that is going to be problematic and cause more problems. He would rather delay and have a product he knows will not have any issues. One of the problems was losing the hearing mid-stream and the judge doesn't know it, and then ending up with a lot of remands. CIO Dressler considers this a big issue so they want to make sure that it is fixed before they do rollout.

Chair Block asked about the new process happening at EDD that CUIAB could adopt to make delivery of information from EDD to CUIAB smoother.

CIO Dressler explained that EDD has a modernization project that is in the initial stages of requirements gathering. They do not anticipate having it implemented for about six to nine years but it is going to streamline their system. It is a huge project because they have UI, tax and DI, and they are all different systems. This system they are bringing in will be one system that takes care of everything. He has been communicating with EDD IT that CUIAB needs to be involved in their process to make sure we are not left behind when they finally do bring the new system online. He does not know if legally CUIAB can actually be part of EDD's system because of separation of powers but he want to make sure we get the information we need from the get go and that any information we receive fits into our system. If they give CUIAB the new information and it does not work, we have to redesign. We have to get in the forefront of this. Next time he meets with the Chief CIO at EDD he is going to make sure that CUIAB IT is kept in the loop so there is a better meld of communication between EDD and CUIAB.

Member Corbett commented that the fact EDD is doing a modernization project is very encouraging and she understands the six to nine years very well.

Vice Chair Allen mentioned that the Department of Defense is still running on legacy systems from the 80's with floppy disks. Also, he thinks cyber security is becoming just a bigger and bigger issue that needs to be addressed.

CIO Dressler responded that actually the biggest problem is the bureaucratic red tape and all the processes to go through with Finance, DGS, procurement, and bidding, and you do not want to have it stop because someone protests. It is going to be very high profile.

Chair Block commented that if nine years is the projected end point we are talking about two Governors down the road.

9. Chief Administrative Services, Robert Silva Report:

Chief Silva reported on the bilingual audit that CUIAB is currently doing. There are 42 CUIAB employees currently receiving the bilingual pay differential and this month they are being audited to ensure that they are utilizing their skills to the 10% threshold. The audit is biannual so the next audit will be in May 2018.

Chief Silva reported that a new contract was recently executed for the continuation of our online legal research through LexisNexis Company. Lexis changed its online platform so they reached out to all of CUIAB legal professionals to see who wanted to do training. Lexis is a great company and will continue to provide whatever training CUIAB wants, including one-on-one training if it comes to that. The new version is much more user friendly than the previous version of Lexis.

Action Items:

10. SuperShuttle Inc. v. Henning, Sacramento Superior Court No. 2014-80001841, vote regarding removal of precedential designation status P-T-502.

Acting Chief Counsel Ralph Hilton explained that the Board had adopted P-T-502 as a precedent decision, SuperShuttle, finding that the franchisees were employees. Subsequently, SuperShuttle took that issue to Court pursuant to the statutory process which does not include CUIAB as a respondent. Under the statutory process the Director of the Employment Development Department is the only proper respondent. The Superior Court issued a decision finding that the franchisees are not employees but instead independent contractors. We have been waiting to see whether or not EDD was going to appeal and, for whatever

reasons, EDD decided not to appeal. The Superior Court decision is now final. It is a formality, but the Board needs to decertify the precedent designation for SuperShuttle, which requires a Board vote.

Member Dresser asked if in terms of the legal analysis, the Superior Court decision is not binding on CUIAB except in this one case, so it does not impact how CUIAB treats future similar cases

Acting Chief Counsel Hilton replied that was correct. It is a single Superior Court decision that is not legally binding except with regard to this case.

Member Dresser asked if the legal analyses that were set forth in that precedent decision are still usable although not for the SuperShuttle workers.

Acting Chief Counsel Hilton responded in the negative, because the Superior Court effectively held that CUIAB applied the wrong legal analysis in that case.

Member Dresser asked if that was binding on CUIAB in the sense of future cases.

Acting Chief Counsel Hilton stated it is not binding per se, but clearly the CUIAB would have to take note of the Superior Court's view of the facts and analysis of that case.

Member Dresser asked if a similar case happens in the future and the Board does what it did in Supershuttle and it is appealed to a different judge, that judge may side with the Board.

Acting Chief Counsel Hilton stated that is possible, but observed that all challenges to tax assessments must be filed in the Sacramento Superior Court, so even with a different judge we're still in the same court.

Chair Block called for a motion to take away the precedential designation of P-T-502. Member Corbett so moved with Vice Chair Allen second. Roll call vote unanimous 4-0 to remove the precedential designation.

Closed Session:

The Board adjourned Open Session and went into Closed Session, which adjourned at approximately 1:50 p.m.

Open Session:

The Board reconvened in Open Session. Chair Block reported that no votes were taken in Closed Session and that there was nothing further to report.

Chair Block adjourned Open Session at approximately 1:55 p.m.